MINUTES

COLORADO REAL ESTATE COMMISSION MEETING June 5, 2012

MINUTES – INDEX

	PAGE
ADJOURN	13
COMPLAINT MATTERS:	
1. Complaint #2011040482 & 2011111220 (PC)	6
2. Complaint #2011050605 (RB)	7
3. Complaint #2011111285 (PC)	8
4. Complaint #2011070821 & 2011080903 (RP)	8
5. Complaint #2011101136 (ES)	9
EXECUTIVE SESSION MATTERS:	
A. Complaint #2010080919 (JF)	13
EXPEDITED SETTLEMENT MATTERS (ESP):	
A. Report on Initial Decision's and Final Agency Orders	12
B. Complaint #2011030391 (PS)	12
C. Complaint #2010091078 (JS)	12
D. License Application Reconsideration (GM)	12
E. Complaint #2001090714 (WF)	13
F. Complaint #2007050657 (LF)	13
LICENSING MATTERS:	
A. Licensing Application (TD)	10
B. Licensing Application (LT)	10
C. Preliminary Advisory Opinion (MD)	11
D. Licensing Application (WD)	11
MINUTES – APPROVAL	
CREC Meeting – April 3, 2012	4
POLICY MATTERS:	
A. New Commissioner Introductions	4
B. CPS-33	5
C. Title Insurance and Closing Instructions	4
D. Governor's Energy Office – "Green Features Addendum"	4

E. Affiliated Business Disclosures	5
F. Disciplinary Icon Update	5
G. CP-43 Inspection Resolutions	5
H. CP-37 Survey and Lease Objections	5
I. LEAN Initiative	5
L. Legislative Update	5
M. Attorney General Update	6
N. Service Recognition Award – Candace Boyle	6
O. Selection of Vice-Chair	6
RULEMAKING HEARING:	
Permanent Rule D-14	3
Permanent Rule E	3

MINUTES COLORADO REAL ESTATE COMMISSION MEETING June 5, 2012 COLORADO DIVISION OF REAL ESTATE 1560 BROADWAY, SUITE 1250-C DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on June 5, 2012. Those Commissioners in attendance were Chair Chris McElroy, Vice-Chair Kristin Bronson, Amy Jo Dorsey, Gina Piccoli, and Julia T. Waggener. Also attending were Marcia Waters, Director; Cary Whitaker, Deputy Director; Hollis Glenn, Enforcement Program Manager; Eric Turner, Education, Policy and Communications Manager; Sherri Karstetter, Settlement Specialist; Yvette Gabardi, Rulemaking Coordinator; Peggy Moroney, Program Support; Doreen Archuleta, Enforcement Section and several members of the Commission's Staff. Attending from the Office of the Attorney General are Terry Hugar, Vivian Gembara, Lisa Brenner-Freimann and Kelly Boyle.

Notice of the meeting was timely published and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

The meeting was called to order by Chairman McElroy at 9:06 a.m.

PERMANENT RULEMAKING HEARING:

Permanent Rule D-14, Errors and Omissions (E&O) Insurance –

It was moved by Commissioner Piccoli and seconded by Commissioner Dorsey to adopt Permanent Rule D-14, "Errors and Omissions (E&O) Insurance" as written.



Motion unanimously carried.

Permanent Rule E – Separate Accounts, Records, Accountings, Investigations –

It was moved by Commissioner Waggener and seconded by Commissioner Bronson to adopt Permanent Rule E, "Separate Accounts, Records, Accountings, Investigations" as amended.



Public Comment was offered by Ms. Lisa Rice, American Home Shield on Permanent Rule E.

Motion unanimously carried.

The Permanent Rulemaking Hearing closes at 9:21 a.m.

ORDER OF BUSINESS

Approval of Minutes – April 3, 2012

It was moved by Commissioner Piccoli and seconded by Commissioner Bronson to approve the Minutes of April 3, 2012, as presented.

Commissioner Waggener abstains from voting. Motion carried.

POLICY MATTERS:

New Commissioner Introductions-

The Division of Real Estate is pleased to have Amy Jo Dorsey and Julia T. Waggener join as new members of the Real Estate Commission.

Title Insurance and Closing Instructions-

Director Marcia Waters will communicate the Commission's concerns on the Closing Instructions Form to the Division of Insurance. At the August meeting, Director Waters will have a revised position statement and revised forms for the Commission's review.

Public Comment was offered by the following individuals with regard to Title Insurance and Closing Instructions:

Gary Wolff, TI Services Cindi Compton, Land Title Association Company of Colorado Damian Cox, Attorney and Forms Committee Member Megan Hanson, Land Title Association Company of Colorado

Governor's Energy Office - "Green Features" -

Peter Rusin, Residential Buildings Associate with the Colorado Energy Office, provided an informative presentation for the Commission.

It was moved by Commissioner Piccoli and seconded by Commissioner Waggener to direct staff to prepare a newsletter article about the "Green Features Addendum" and to add it as an addendum to the non-mandatory property disclosures. Additionally, the Commission requests that it be included in the mandatory update course.

Motion unanimously carried.

Commission Position Statement 33 - Good Funds -

It was moved by Commissioner Bronson and seconded by Commissioner Piccoli to rescind/retire the Commission's Position Statement 33, entitled "Good Funds".

Motion unanimously carried.

Affiliated Business Arrangements –

It was moved by Commissioner Piccoli and seconded by Commissioner Waggener to direct staff to draft a State-approved form to incorporate the content of the Commission's Position Statement 38 on Affiliated Business Arrangements.

Motion unanimously carried.

Disciplinary Icon Update-

Director Marcia Waters advised the Commission that the disciplinary icon will no longer be visible to the public, beginning in August, 2012. The disciplinary documents will still be attached to the licensee and available for review. In place of the previous disciplinary icon, there will be a tab that will take the viewer to the disciplinary documents.

Commission Position Statement 43 – Inspection Resolutions –

Following discussions between the Commission and Damian Cox, Attorney and member of the Forms Committee, it was determined that Division staff will work on making the language more clear and to simplify the position statement.

Commission Position Statement 37 – Survey and Lease Objections –

It was moved by Commissioner Piccoli and seconded by Commissioner Waggener to rescind/retire the Commission's Position Statement 37, entitled "Survey and Lease Objections".

Motion unanimously carried.

LEAN Initiative –

Director Marcia Waters informed the Commission that the Division is looking at ways to cut waste and create efficiencies with regard to investigations and expedited settlements through the LEAN Initiative. The goal is to settle 75% of our cases internally within a period of sixty days and to submit less to the Attorney General's Office for settlement. Staff is looking for internal efficiencies and to streamline operations.

Legislative Update -

Director Marcia Waters advised the Commission that HB 12-1110, concerning the Regulation of Appraisal Management Companies, is waiting on the Governor's signature. It has an effective date of July 13, 2013.

Attorney General Update -

It was announced that Terry Hugar has resigned his position at the Colorado Attorney General's Office to take a promotion as an Administrative Law Judge in West Virginia. Vivian Gembara will serve as the Commission's general counsel along with Lisa Brenner-Freimann.

Service Recognition Award - Candace Boyle -

The Real Estate Commission thanked Candace Boyle with Bradford Publishing for her service as a member of the Forms Committee.

Selection of Vice-Chair

It was moved by Commissioner Piccoli and seconded by Commissioner Waggener to nominate Kristin Bronson as Vice-Chair of the Real Estate Commission.

Motion unanimously carried.

COMPLAINT MATTERS:

NOTICE: The following complaint matters contain summaries of investigative findings and proposed offers of settlement. Ultimate settlement terms, imposition of discipline or findings of license law violations may differ from those originally considered by the Commission. The investigative report, exhibits and all other Commission records relating to each proceeding may be public records as defined by the Colorado Open Records Act, § 24-72-203, C.R.S. and any other applicable laws.

1. Complaint #2011040482 and 2011111220 (PC) -

The investigative report concerning a complaint filed by Lon V. Cohen against the respondent in Complaint #2011040482 and 2011111220 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

A. Two complaints were received regarding the property management practices of the respondent. The allegations include assessing marked-up fees for repairs, failure to disclose a relationship with the repair service, and failure to properly manage rental income. During the course of the investigation, staff discovered that trust accounts had not been properly reconciled since 2009; the respondent commingled funds from his rental expenses/income with the Owners' Trust Account; and that the respondent would, through his repair company, mark-up invoices typically increasing the hour rate for labor done. The respondent did disclose his affiliated business with the Division and maintains that he is subcontracting the repairs. The respondent states that his company is taking the responsibility for the work and thus charges his clients accordingly. Respondent advertises on his website that he does not charge a mark-up and states "Our price is your price and we pass all discounts on to you, the owner."

Ultimately, it appears the respondent and his affiliated business is making an undisclosed profit through his management of the repairs to the rental properties; and

- B. This is a possible violation of:
 - a. § 12-61-113(1)(a), C.R.S. false advertising (\$2,500);
 - b. § 12-61-113(1)(b), C.R.S. making false promise to influence (\$2,500);
 - c. § 12-61-113(1)(n), C.R.S. unworthy, incompetent practice (\$2,500);
 - d. § 12-61-113(1)(k), C.R.S. violation of any Commission rule;
 - e. E-1(p)(8) -Assesses a mark-up for AFBA w/o approval (\$1,000);
 - f. E-1(f)(5) commingling income from personal interests (\$250); and
 - g. E-1(p)(1-6)- record keeping requirements (\$1,000).
- C. The respondent's real estate broker's license shall be summarily suspended.

Motion unanimously carried.

It was further moved and seconded by the Commission that in addition to the summary suspension of the respondent in the above related case, the Commission directs the Attorney General's Office to seek revocation of the respondent's real estate broker's license, a public censure and a fine in the amount of up to \$9,750.00

Motion unanimously carried.

2. Complaint #2011050605 (RB) -

The investigative report concerning a complaint filed by Brent Lang against the respondent in Complaint #2011050605 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant entered into a contract to sell his property to a buyer who was represented by the respondent. In the contract the \$20,000 earnest money would become nonrefundable upon 45 days of the signed contract. The respondent misrepresented in the contract as he checked the box acknowledging receipt of the earnest money when the buyer had not provided the money. The respondent acknowledges his lapse in judgment as he should not have acknowledged receiving the money. The respondent states he informed the complainant that the earnest money had not been collected and that the contract was void. This occurred on 13 other contracts with the same buyer/developer from Chicago. Finally, the respondent failed to properly disclose he was acting as a transaction-broker prior to engaging the Complainant; and
- B. This is a possible violation of:
 - a. §12-61-808 (2)(a), C.R.S. transaction-broker disclosure (\$500);
 - b. § 12-61-113(1)(c), C.R.S. making false promises, misrepresentation (\$1,000);
 - c. §12-61-807 (2)(III) and (iv), C.R.S. obligations and responsibilities (\$1.000).

- C. The respondent's real estate broker's license shall be publicly censured; and
- D. The respondent's real estate broker's license shall be suspended for a period of 60 days; and
- E. He shall pay a fine to the Commission in the amount of up to \$2,500; and
- F. The respondent shall successfully complete real estate education courses in Contracts, Brokerage Relationships and Ethics.

Motion unanimously carried.

3. Complaint #2011111285 (PC) -

The investigative report concerning a complaint filed by Nathan and Amy Berg against the respondent in Complaint #2011111285 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The respondent sold a home to the complainants in November 2011. He was the owner and occupant of the home prior to the sale, and acted on his own behalf as seller's broker. Shortly after moving into the home the complainants noticed significant structural defects developing, and they soon found out from the home builder that the house had been the subject of fifteen separate engineering reports since 2006, and that the builder has completed major structural repairs to the house, and were continuing to monitor it for potential ongoing problems. The Property Disclosure Form completed by the respondent did not disclose the structural defects and repairs in the home; and
- B. This is a possible violation of:
 - a. § 12-61-113(1)(n), C.R.S. unworthy, incompetent practice (\$2,500);
 - b. § 12-61-113(1)(t), C.R.S. dishonest dealing (\$2,500);
 - c. § 12-61-804(3)(a), C.R.S. Failing to disclose adverse material facts (\$2,500).
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. The respondent's real estate broker's license shall be revoked; and
- E. He shall pay a fine to the Commission in the amount of up to \$7,500.

Motion unanimously carried.

4. Complaint #2011070821 and 2011080903 (RP)-

The investigative report concerning a complaint filed by Wayne Newsom and the Commission on its own motion against the respondent in Complaint #2011070821 and 2011080903 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The respondent is engaged in limited service/flat fee listings and is using a non-Commission approved listing. The listing does not contain a specific termination date, however, the listing allows the seller to terminate the listing with 24-hour-notice. The respondent did not provide, sign and be responsible for an accurate, complete and detailed closing statement;
- B. This is a possible violation of:
 - a. § 12-61-113(1)(k), C.R.S. violation of any Commission rule;
 - b. § 12-61-807(2)(b), C.R.S. Exercising reasonable skill and care;
 - c. Commission Rule E-5 closing responsibility;
 - d. Commission Rule E-11 listing must have termination date;
 - e. Commission Rule F-7 use of Commission approved forms.
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. The respondent's real estate broker's license shall be suspended for a period of 60 days; and
- E. He shall pay a fine to the Commission in the amount of up to \$7,500; and
- F. The respondent shall successfully complete real estate education courses in Brokerage Relationships and Contracts.

Motion unanimously carried.

5. Complaint #2011101136 (ES)-

The investigative report concerning a complaint filed by the John Ryan Liddle against the respondent in Complaint #2011101136 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. Complainant alleges that respondent refused to return his security deposit.

 Respondent states that he was holding the deposit as outlined by the lease and to mitigate any damages incurred by the owner as a result of the complainant's breach of the lease. Subsequent to the complaint, the complainant's deposit was returned. In addition, despite having completed coursework in trust accounts, property management and contracts as part of a stipulated agreement from a prior investigation, the staff found the respondent was still not conducting proper reconciliations of his trust accounts and there were several accounting errors.

 Documents in the respondent's files are not fully executed and respondent was doing business under a trade name without first registering the trade name with the Division. Respondent has agreed to begin conducting monthly three-way reconciliations, agreed to review calculations for accuracy and properly registered the trade name with the Division; and
- B. This is a possible violation of:
 - a. § 12-61-113(1)(g), C.R.S. failure to account for funds received (\$1,000);
 - b. § 12-61-113(1)(k), C.R.S. violation of any Commission rule (see rules);
 - c. § 12-61-113(1)(o), C.R.S. failure to supervise associates per Rule E-31 (\$500);

- d. § 12-61-113(1)(n), C.R.S. unworthy, incompetent practice (\$500);
- e. Commission Rule E-1(p) recordkeeping requirements (\$500);
- f. Commission Rule CE-32 high level of supervision of licensees under two years (\$0).
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. The respondent's real estate broker's license shall be suspended for a period of 30 days; and
- E. He shall pay a fine to the Commission in the amount of up to \$2,500.
- F. The respondent shall successfully complete real estate education courses in Property Management, Ethics and Trust Accounts.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A (TD)-

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant. The Applicant failed to disclose in his application for a Colorado real estate broker's license that he previously held a Colorado mortgage loan originator (MLO) license and that such license had been subject to discipline. The Applicant's MLO discipline was based upon practice with inactive license, failure to remit an unearned up-front payment back to a client, failure to maintain a valid surety bond, failure to maintain Errors and Omissions Insurance, and failure to respond to an MLO Board investigation. In addition, the Applicant failed to pay a major portion of the required fine, and during 2011, the MLO Board was forced to refer the matter to Central Collections. The Applicant paid the balance of the fine when he submitted his application for a real estate broker's license. As to his failure to make appropriate disclosures on his application, the Applicant claims that he misread or misunderstood the instruction. As to his failure to pay a stipulated fine, the Applicant maintains that he did not have adequate funds to do so.

It was moved and seconded by the Commission to deny the license.

Motion unanimously carried.

Licensing Matter B (LT)-

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant. This Applicant disclosed that in 1992, she pled guilty to a California felony charge of Theft by Embezzlement, and was sentenced to serve 180 days in jail, followed by a five-year probation, and to pay restitution in the amount of \$20,000. During 1994, the Applicant's probation became subject to review because she was in arrears on restitution payments. By 1998, the Applicant was released from probation, but still owed a restitution balance of \$12,512.41; and the Court converted such balance to a civil judgment. To date, the Applicant has made no payments in satisfaction of the \$12,512.41 balance.

The Applicant attributes her embezzlement to an unstable early life and financial pressures, but maintains that she has since matured into a responsible individual and has not been the subject of any other criminal charges. As to her failure to complete restitution, the Applicant maintains that, until recently, she believed the remainder of the debt had been excused once she completed her probation.

It was moved and seconded by the Commission to deny the license.

In an amended motion, it was moved by Commissioner Bronson and seconded by Commissioner Piccoli to deny the license and direct staff to communicate with the Applicant that the basis for denial is failure to complete restitution requirements as ordered by the court.

Motion unanimously carried.

Licensing Matter C (MD)-

The Commission considered the Preliminary Advisory Opinion (MD) for a real estate broker's license together with accompanying documentation and information supplied by the applicant. During the years from 1998 to 2000, when the applicant was a minor, he was convicted in four criminal cases including Misdemeanor Theft, Felony Controlled Substance Distribution, Felony Controlled Substance Use, DWAI and Misdemeanor Providing of False ID to authorities. During 2001, the Applicant pled guilty to a federal charge of Possession of Handgun by a Felon, and served a 1 ½ -year term of incarceration followed by a 2 ½-year term of parole. In 2007, the Applicant pled guilty to a misdemeanor charge of false reporting. According to the Applicant, he has had no convictions since 2007 and now owns and operates his own business, which sells and installs satellite dishes and security systems.

It was moved and seconded by the Commission to issue a favorable opinion. Upon application, the applicant's real estate broker's license will be restricted for a period of five years, requiring direct supervision of an employing broker.

Motion unanimously carried.

Licensing Matter D (WD)-

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant. This Applicant disclosed four 2007 criminal cases resulting in guilty pleas to Felony Trespass, Misdemeanor False Identification to Authorities, Misdemeanor Protection Order Violation and Misdemeanor Obstruction of Police Officer. The Applicant generally attributes the foregoing matters to heavy alcohol consumption and resulting poor choices at a time when he was going through a difficult divorce. The Applicant did not disclose a 1992 case in which he was charged and pled guilty to a felony count of converting funds belonging to his employer. He did not disclose on the original application, denied the guilty plea when asked by the investigator, and denied the charge a second time to the Investigations Program Manager, only to remember days later that he did plead guilty to a felony in 1992. According to the Applicant, he did not recollect the 1992 case at the time he completed his application.

The Applicant notes that he has successfully completed all court orders, has completed alcohol treatment, is an active member and sponsor of Alcoholics Anonymous, and has since remarried and started a new family.

It was moved and seconded by the Commission to deny the license.

Motion unanimously carried.

EXPEDITED SETTLEMENT PROCESS (ESP) MATTERS:

ESP Matter A - Report on Initial Decisions and Final Agency Orders

NAME	COURT ACTION	DISPOSITION
Kimberly Diane Myers	Initial Decision for Revocation	FAO signed 4/2/12
	& \$7,000 civil penalty	
James C. Colson	Initial Decision for	FAO signed 4/2/12
	Revocation & \$2,500 civil	
	penalty	

ESP Matter B, Complaint #2011030391 (PS)-

The Commission was presented with a counter-offer from the respondent in Complaint #2011030391 (PS). After discussion, it was moved and seconded by the Commission to accept the counteroffer.

Motion unanimously carried.

NOTE: Commissioner McElroy recuses himself from consideration of the next case and leaves the room at 1:17 p.m.

ESP Matter C – Complaint #2010091078 (JS)

The Commission was presented with a counter-offer from the respondent in Complaint #2010091078 (JS). After discussion, it was moved and seconded by the Commission to reject the counteroffer.

Motion carried.

NOTE: Commissioner McElroy returns to the room at 1:24 p.m.

ESP Matter D – License Application Reconsideration (GM) -

The Commission was requested to reconsider its decision with regard to issuing a real estate broker's license to an applicant that included a five-year restriction requiring supervision. After discussion, it was moved and seconded by the Commission to approve the license with no further restrictions.

Motion unanimously carried.

NOTE: ESP Matters E (complaint #2001090714-WF) and F (complaint #2007050657-LF) were removed from consideration by the Commission. Both requests to remove the disciplinary icon from their licenses will be addressed with the new policy on disciplinary icons.

EXECUTIVE SESSION:

It was moved, seconded and approved by more than two-thirds vote by the Commission that pursuant to \$24-6-402(3)(a)(II), C.R.S., to convene the Colorado Real Estate Commission into Executive Session for the purpose of receiving legal advice pursuant to C.R.S. \$24-6-402(3)(a)(II) concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice on specific legal questions regarding Complaint #2010080919 (JF).

Motion unanimously carried.

The Commission adjourned out of Executive Session at 1:46 p.m.

EXECUTIVE SESSION MATTERS:

Executive Session Matter A – Complaint #2010080919 (JF) – AAG Kelly Boyle

The Commission was presented with a counteroffer from the respondent in Complaint #2010080919 (JF). After discussion, it was moved by Commissioner Bronson and seconded by Commissioner Piccoli to reject the counteroffer.

Motion unanimously carried.

ADJOURN:

The Real Estate Commission meeting adjourned at 1:48 p.m. on June 5, 2012.

	Amy Jo Dorsey, Commissioner	
	Gina Piccoli, Commissioner	
	Julia T. Waggener, Commissioner	
Marcia Waters, Director Colorado Division of Real Estate		